

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL R. SIMMER)	
Claimant)	
VS.)	
)	
IBP, INC.)	DOCKET Nos. 131,483
Respondent)	and 143,500
Self-Insured)	
And)	
)	
WORKERS COMPENSATION FUND)	

ORDER

The Appeals Board has considered the claimant's Application for Review of the Order Denying Penalties entered by Administrative Law Judge Floyd V. Palmer dated August 12, 1994. Appeals Board Member Gary M. Korte recused himself from the proceeding and Ernest L. Johnson was appointed Pro Tem.

APPEARANCES

The claimant appeared by and through his attorney, John J. Bryan of Topeka, Kansas. The self-insured respondent appeared by and through its attorney, Pamela L. Falk of Emporia, Kansas. The Workers Compensation Fund appeared by and through its attorney, Diane F. Barger of Emporia, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of hearing on claimant's request for penalties held before Administrative Law Judge Floyd B. Palmer on May 6, 1994, and the exhibits attached thereto.

ISSUES

The Administrative Law Judge by Award entered on August 3, 1993 awarded claimant benefits for permanent partial disability in these claims and, further, apportioned the liability for those benefits between respondent and the Kansas Workers Compensation Fund. The Fund did not timely pay to claimant the portion of the benefits assessed against it. Claimant requested penalties against the respondent, based on claimant's assertion that the respondent was liable to claimant for the entire Award and the liability of the Fund was only derivative. The Administrative Law Judge denied claimant's request for penalties. The claimant appeals that finding of the Administrative Law Judge and requests that the Appeals Board determine whether penalties should be awarded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Order of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. Having reviewed the entire record, the Appeals Board finds the findings and conclusions, as enumerated in the Order of the Administrative Law Judge, to be accurate and appropriate, and adopts same as its own findings as if specifically set forth herein.

The Award of the Administrative Law Judge, entered August 3, 1993, properly shifted liability from respondent to the Kansas Workers Compensation Fund for that percentage of claimant's benefits assessed against the Fund. The respondent was not liable to claimant for that portion. Nettle v. CertainTeed Corp., 10 Kan. App. 2d 225, 696 P.2d 415 (1985). The respondent timely paid its share of the benefits to claimant. Although the share apportioned to the Fund was not timely paid, penalties pursuant to K.S.A. 44-512a may not be assessed against the Kansas Workers Compensation Fund. Hall v. City of Hugoton, 2 Kan. App. 2d 728, 587 P.2d 927 (1978). The request for penalties was properly denied, and the Appeals Board adopts the analysis of the Administrative Law Judge in all respects.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order Denying Penalties of Administrative Law Judge Floyd V. Palmer dated August 12, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

cc: John J. Bryan, Topeka, Kansas
John D. Jurcyk, Lenexa, Kansas
Fred Greenbaum, Kansas City, Kansas
Diane F. Barger, Emporia, Kansas
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director